III. The Decision Below Is Wrong on the Merits.

Petitioner is entitled to "assert[] his own rights" under the Tenth Amendment. *Gillespie*, 185 F.3d at 703. As this Court explained in *New York*, the Tenth Amendment seeks to ensure "the accountability of both state and federal officials." 505 U.S. at 168. The Constitution does not divide authority between the federal government and the States "for the benefits of the States or state governments as abstract political entities." *Id.* at 181. Instead, "[t]he separation of the two spheres is one of the Constitution's structural protections of liberty." *Printz* v. *United States*, 521 U.S. 898, 921 (1997). By reserving nondelegated powers to the States and the people, the Tenth Amendment helps to ensure that federal power will not be extended at the expense of individual liberty.

Respondents' claim that private-party standing would "offend principles of State autonomy, dignity, and independence" (Sullivan BIO 22) is groundless. Private-party standing helps invigorates our system of dual sovereignty by assuring that states do not acquiesce in federal encroachments or conspire with the federal government to circumvent the Tenth Amendment. As this Court noted in *New York*, "powerful incentives might lead both federal and state officials to view departures from the federal structure to be in their personal interests. * * * [I]t is likely to be in the political interest of each individual official to avoid being held accountable to the voters for [an unpopular decision]." 505 U.S. at 182. States may be especially likely to capitulate to federal incursions in a case like this one, in which the coercive federal statute imposes its most severe burdens on a relatively narrow subset of the State's citizens and affects state finances only indirectly.

The Court's decision in *TVA* does not require a different result. Respondents and the First Circuit place far too much weight on a single ambiguous and cryptic line in that outdated precedent. See *Gillespie*, 185 F.3d at 700 (describing the Court's comment about private-party standing in *TVA* as an "observ[ation] in passing"). The Court in *TVA* stated that

"there is no objection to the Authority's operations by the states, and, if this were not so, the appellants, absent the states or their officers, have no standing *in this suit* to raise any question under the amendment." 306 U.S. at 144 (emphasis added). That passing reference to private-party standing came after the Court established that the utilities lacked a "legal right" to be free from government-sponsored competition. *Id.* at 137. Consequently, the most sensible reading of the Court's statement is that the private plaintiffs in *TVA* would not have had standing even if the states had objected because, as the Court had already determined, their claim was not based on a legal right. However, the sort of "legal interest" test employed in *TVA* has long since been abandoned by this Court and replaced with a more forgiving "zone of interest" requirement. See, *e.g.*, *Ass'n of Data Processing Serv. Orgs.* v. *Camp*, 397 U.S. 150, 153 (1970).

Respondents fail in their attempt (Sullivan BIO 24) to show that the rule of *TVA* "is supported by this Court's more recent jurisprudence concerning the proper role of the federal courts." The Court has never subsequently cited *TVA* for its statement on private-party standing. Moreover, the Court's recent Tenth Amendment jurisprudence supersedes any assumptions in *TVA* about the nature of that provision. The Court in *New York* explained in unmistakable terms that the Tenth Amendment protects individuals as well as states. 505 U.S. at 181-82. That understanding of the Tenth Amendment defeats respondents' assertion that petitioner is impermissibly invoking the interests of third parties. It also leads to the conclusion that as long as individuals satisfy the usual standing requirements of Article III, there should be no bar to pursuing their Tenth Amendment claims.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Petition, certiorari should be granted.

Respectfully submitted,

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